

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HERB W. DAY,

Plaintiff,

vs.

BANK OF AMERICA, N.A., et al.,

Defendant,

2:11-cv-02030-LRH-GWF

**REPORT AND
RECOMMENDATION**

Application to Proceed in Forma
Pauperis (#1)

This matter is comes before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#1), filed on December 19, 2011. Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1). The standard in 28 U.S.C. § 1915(a)(1) for in forma pauperis eligibility is "unable to pay such fees or give security therefor." Determination of what constitutes "unable to pay" or unable to "give security therefor" and, therefore whether to allow a plaintiff to proceed in forma pauperis, is left to the discretion of the presiding judge, based on the information submitted by the plaintiff or plaintiffs. *See, e.g., Fridman v. City of New York*, 195 F.Supp.2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed.Appx. 157 (2nd Cir. 2002).

In Plaintiff's application to proceed in forma pauperis, Plaintiff indicates that he makes \$1,200 per month. Plaintiff further lists out several household expenses that average approximately \$625 per month. Considering Plaintiff's expenses in combination with his expenses, Plaintiff has almost \$600 per month in discretionary income. Based on the financial

1 information provided, the Court finds that Plaintiff has the ability to pay the fees associated with
2 bringing this case. Accordingly, upon consideration of the financial information provided, and to
3 maintain the integrity of the indigent request process, the Court recommends that plaintiff's
4 application to proceed in forma pauperis be denied. Accordingly,

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6 **RECOMMENDATION**

7 **IT IS HEREBY RECOMMENDED** that Plaintiff's Application to Proceed in Forma
8 Pauperis (#1) be **denied**. Plaintiff therefore shall submit to the clerk's office the \$350.00 fee for
9 filing a civil action on or before **Wednesday, January 25, 2012**, or the above-captioned case
10 shall be dismissed without further notice.

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12 **NOTICE**

13 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must
14 be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court
15 has held that the courts of appeal may determine that an appeal has been waived due to the failure
16 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This
17 circuit has also held that (1) failure to file objections within the specified time and (2) failure to
18 properly address and brief the objectionable issues waives the right to appeal the District Court's
19 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
20 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.
21 1983).

22 DATED this 21st day of December, 2011.

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25 GEORGE FOLEY, JR.
26 United States Magistrate Judge
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